

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Apr 22, 2024

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MAKINZEE S.,¹

Plaintiff,

v.

MARTIN O'MALLEY, Commissioner of
Social Security,

Defendant.

No. 4: 23-cv-05152-EFS

**ORDER REVERSING THE ALJ'S
DENIAL OF BENEFITS, AND
REMANDING FOR FURTHER
PROCEEDINGS**

Plaintiff Makinzee S. claims that she is unable to work fulltime due to mental impairments, bipolar disorder, schizoaffective disorder and applied for supplemental security income benefits. She appeals the denial of benefits by the Administrative Law Judge (ALJ) on the grounds that the ALJ erred in applying Acquiescence Ruling 97-4; erred in finding that Plaintiff had no medically determinable impairment other than substance abuse; erred when assessing

¹ For privacy reasons, Plaintiff is referred to by first name and last initial or as "Plaintiff." See LCivR 5.2(c).

1 substance abuse; and erred in his evaluation of the medical opinions. As is
2 explained below, the ALJ erred. This matter is remanded for further proceedings.

3 I. Background

4 In August 2020, Plaintiff filed an application for benefits under Title 16,
5 claiming disability beginning January 1, 2013, based on the mental impairments
6 noted above.² After the agency denied Plaintiff benefits, ALJ Jesse Shumway held
7 a telephone hearing in June 2022 at which Plaintiff appeared with her
8 representative.³ Plaintiff testified, and a vocational expert appeared to testify but
9 was asked no questions by the ALJ or Plaintiff's attorney.⁴

10 After the hearing, the ALJ issued a decision denying benefits.⁵ The ALJ
11 found Plaintiff's testimony of extended sobriety was impossible to accept as
12 credible and he was therefore unable to establish the presence of any medically
13 determinable mental impairment other than substance abuse.⁶ As to medical
14 opinions, the ALJ found:

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17 ² AR 249, 276.

18 ³ AR 58-82.

19 ⁴ *Id.*

20 ⁵ AR 16-32. Per 20 C.F.R. § 416.920(a)-(g), a five-step evaluation determines
21 whether a claimant is disabled.

22 ⁶ AR 23.

- 1 • The opinions of DSHS evaluators David Morgan, PhD, and Luci
2 Carstens, PhD, that Plaintiff had the severe impairments of bipolar
3 disorder and anti-social personality disorder to be unpersuasive.
- 4 • The opinion of consultative examiner Ioly Lewis, MHNP, to be
5 unpersuasive.
- 6 • The opinions of state agency evaluators Howard Platter, MD, and
7 Dorothy Leong, MD, that Plaintiff had no severe physical
8 impairments to be persuasive.
- 9 • The opinions of state agency evaluators Michael Brown, PhD, and
10 Thomas VanHoose, PhD, that Plaintiff had severe mental
11 impairments to be unpersuasive.⁷

12 As to the sequential disability analysis, the ALJ found:

- 13 • Step one: Plaintiff had not engaged in substantial gainful activity
14 since June 22, 2020, the application date.
- 15 • Step two: Plaintiff had the following medically determinable
16 impairments: polysubstance use disorder, left ankle sprain, right arm
17 strain, asthma, skin abscesses, and obesity.
- 18 • Also at Step two: Plaintiff's medically determinable impairments did
19 not singly, or in combination, significantly limit Plaintiff's ability to
20 perform basic work-related activities for twelve consecutive months

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22 ⁷ AR 24-26.
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1 and therefore, Plaintiff does not have a severe impairment or
2 combination of severe impairments.⁸

3 Plaintiff timely requested review of the ALJ's decision by the Appeals
4 Council and now this Court.⁹

5 II. Standard of Review

6 The ALJ's decision is reversed "only if it is not supported by substantial
7 evidence or is based on legal error,"¹⁰ and such error impacted the nondisability
8 determination.¹¹ Substantial evidence is "more than a mere scintilla but less than
9 a preponderance; it is such relevant evidence as a reasonable mind might accept as
10 adequate to support a conclusion."¹²

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12 ⁸ AR 22.

13 ⁹ AR 246.

14 ¹⁰ *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012). *See* 42 U.S.C. §§ 405(g),
15 1383(g).

16 ¹¹ *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012)), *superseded on other*
17 *grounds by* 20 C.F.R. §§ 404.1520(a), 416.920(a) (recognizing that the court may
18 not reverse an ALJ decision due to a harmless error—one that "is inconsequential
19 to the ultimate nondisability determination").

20 ¹² *Hill*, 698 F.3d at 1159 (quoting *Sandgathe v. Chater*, 108 F.3d 978, 980 (9th Cir.
21 1997)). *See also* *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (The
22 court "must consider the entire record as a whole, weighing both the evidence that
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III. Analysis

Plaintiff seeks relief from the denial of disability on four grounds. She argues the ALJ erred in his application of *Chavez v Bowen*.¹³ She also argues that the ALJ erred when he found that she had no medically determinable impairment other than substance use. She argues that the ALJ erred in his assessment of substance use. Additionally, Plaintiff asserts that the ALJ did not give good reasons for finding that the opinions of statement examiners Dr. Brown and Dr. VanHoose and the opinions of DSHS consultative examiner Dr. Morgan that Plaintiff had the severe conditions of bipolar disorder, antisocial personality disorder, anxiety, and schizoaffective disorder to be unpersuasive. The Commissioner argues there was no error because Plaintiff has the burden to prove at step two that the conditions were severe and that the ALJ considered that objective medical evidence undermined Plaintiff's complaints, and that Plaintiff misreported her drug use. The Court disagrees with the Commissioner. As is explained below, the ALJ's analysis contains consequential error.

supports and the evidence that detracts from the Commissioner's conclusion," not simply the evidence cited by the ALJ or the parties.) (cleaned up); *Black v. Apfel*, 143 F.3d 383, 386 (8th Cir. 1998) ("An ALJ's failure to cite specific evidence does not indicate that such evidence was not considered[.]").

¹³ *Chavez v. Bowen*, 844 F.2d 691 (9th Cir. 1988).

A. Medical Opinions: Plaintiff establishes consequential error

Plaintiff argues the ALJ erred in his evaluation of the medical opinions.¹⁴ Specifically, Plaintiff first argues that the ALJ erred in discounting the opinions of all five medical sources who rendered an opinion without articulating any consideration of the two required factors of supportability and consistency. Plaintiff asserts that the ALJ erred in summarily dismissing the opinions of Dr. Morgan, Dr. Carstens, and MHNP Lewis because they were purportedly based on misinformation. She argues that the ALJ erred in dismissing the opinions of Dr. Brown and Dr. VanHoose based on his assumption that they did not understand or properly apply the requirements of the DSM-V to diagnose bipolar disorder and antisocial personality disorder when they made their diagnoses.

1. Standard

The ALJ was required to consider and evaluate the persuasiveness of the medical opinions and prior administrative medical findings.¹⁵ The factors for evaluating the persuasiveness of medical opinions and prior administrative medical findings include, but are not limited to, supportability, consistency,

¹⁴ An ALJ must consider and articulate how persuasive he found each medical opinion, including whether the medical opinion was consistent with and supported by the record. 20 C.F.R. § 416.920c(a)–(c); *Woods v. Kijakazi*, 32 F.4th 785, 792 (9th Cir. 2022).

¹⁵ 20 C.F.R. § 416.920c(a), (b).

1 relationship with the claimant, and specialization.¹⁶ Supportability and consistency
2 are the most important factors,¹⁷ and the ALJ must explain how he considered the
3 supportability and consistency factors when reviewing the medical opinions and
4 support her explanation with substantial evidence.¹⁸ The ALJ may consider, but is
5 not required to discuss the following additional factors: the source's relationship to
6 Plaintiff such as length of the treatment, purpose of the treatment relationship and
7 whether the source examined Plaintiff, as well as whether the source had advanced
8 training or experience to specialize in the area of medicine in which the opinion
9 was being given.¹⁹ When considering the ALJ's findings, the Court is constrained to
10 the reasons and supporting explanation offered by the ALJ.²⁰

14 ¹⁶ 20 C.F.R. § 416.920c(c)(1)–(5).

15 ¹⁷ *Id.* § 416.920c(b)(2).

16 ¹⁸ *Id.* § 416.920c(b)(2); *Woods v. Kijakazi*, 32 F.4th a at 785 (“The agency must
17 articulate . . . how persuasive it finds all of the medical opinions from each doctor
18 or other source and explain how it considered the supportability and consistency
19 factors in reaching these findings.”) (cleaned up).

20 ¹⁹ *Id.* § 416.920c(b)(2).

21 ²⁰ *See Burrell v. Colvin*, 775 F.3d 1133, 1138 (9th Cir. 2014) (recognizing court
22 review is constrained to the reasons the ALJ gave).

1 2. Medical Opinions

2 The five medical sources who rendered an opinion each opined that Plaintiff
3 suffered from at least one severe mental illness which existed separate and apart
4 from substance use.

5 *a. Dr. Morgan and Dr. Carstens*

6 David Morgan, PhD, examined Plaintiff at the request of DSHS to determine
7 whether she was eligible to be excluded from mandatory work programs due to
8 disability.²¹ Luci Carstens, PhD, later reviewed his opinions and found them
9 partially consistent with the medical record.

10 Dr. Morgan examined Plaintiff on May 7, 2020.²² At the time that she was
11 seen, Plaintiff reported being treated at Comprehensive Healthcare and received
12 counseling and psychiatric medication management.²³ Plaintiff reported a history
13 of marijuana abuse but stated that she had been sober for three years.²⁴

14 Dr. Morgan opined that Plaintiff suffered from bipolar disorder, moderate to
15 marked in severity with mania more frequent than depression; and antisocial
16 personality, marked severity.²⁵

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18 ²¹ AR 570-575.

19 ²² AR 570.

20 ²³ *Id.*

21 ²⁴ AR 571.

22 ²⁵ *Id.*

1 Dr. Morgan stated that Plaintiff had a severe limitation in the following:
2 adapting to changes in a work setting, communicating and performing effectively
3 in a work setting, and completing a normal work day without interruption.²⁶ He
4 opined that she had a marked limitation in the following: understand, remember
5 and persist in performing complex tasks; performing activities within a schedule,
6 maintaining attendance, and being punctual; making simple work-related
7 decisions; asking simple questions or requesting assistance; maintaining
8 appropriate behavior in a work setting; and completing a normal workday and
9 work week without interruption.²⁷ He also opined that Plaintiff would have a
10 moderate limitation in being aware of hazards and taking precautions.²⁸

11 Dr. Morgan opined that Plaintiff's limitations were not primarily the effect of
12 substance abuse, that the effects would persist following 60 days of sobriety, and
13 that substance abuse treatment was not necessary.²⁹ He stated that Plaintiff could
14 benefit from mental health treatment.³⁰

15 On mental status examination, Plaintiff had rapid speech, normal mood and
16 affect, cooperative behavior, normal thought process, was oriented, and had normal
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18 ²⁶ AR 572.

19 ²⁷ *Id.*

20 ²⁸ *Id.*

21 ²⁹ *Id.*

22 ³⁰ *Id.*

1 perception.³¹ Plaintiff's recent memory and her immediate memory were
2 challenged.³² Plaintiff's fund of knowledge was limited and her concentration was
3 not within normal limits.³³ Plaintiff had abnormal abstract thought and was not
4 able to interpret proverbs.³⁴ Plaintiff's insight and judgment were less than
5 adequate and when asked what she would do if she smelled smoke in a crowded
6 theatre said she would ask who had a cigarette.³⁵

7 On May 8, 2020, Dr. Carstens reviewed Dr. Morgan's opinion.³⁶ She opined
8 that the diagnoses of bipolar disorder and antisocial personality disorder that
9 Dr. Morgan assigned to Plaintiff were consistent with the medical record.³⁷ She
10 also opined that the severity of the limitations opined by Dr. Morgan were elevated
11 and that as to the ability to ask simple work question and make simple decisions
12 there should be no limit.³⁸ She opined that several other limitations were moderate
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15 ³¹ AR 573-574.

16 ³² AR 574.

17 ³³ AR

18 ³⁴ *Id.*

19 ³⁵ AR 575.

20 ³⁶ AR 577-578.

21 ³⁷ AR 577.

22 ³⁸ *Id.*

1 rather than severe.³⁹ Dr. Carstens opined that Plaintiff would remain impaired for
 2 24 months and that the onset date should be December 15, 2014.⁴⁰

3 *b. MHNP Lewis*

4 Ioly Lewis, MHNP, examined Plaintiff at the request of the Commissioner.⁴¹
 5 MHNP Lewis stated that she reviewed medical records from Dr. Morgan,
 6 Comprehensive Healthcare, Providence St. Mary, and a June 16, 2020
 7 memorandum from the state agency.⁴² Plaintiff denied present use of drugs but
 8 stated that she was treated in 2015 for drugs and alcohol.⁴³ On examination,
 9 Plaintiff was cooperative; her speech was normal; her mood was anxious and her
 10 affect was congruent; her thought process was goal directed and circumstantial;
 11 she reported a history of hallucinations but said she was not presently having
 12 them; she could concentrate on most things but she had had issues with her fund of
 13 knowledge, concentration, abstract thinking, and judgment; and her insight was
 14 fair.⁴⁴

17 ³⁹ Id.

18 ⁴⁰ AR 578.

19 ⁴¹ AR 443-451.

20 ⁴² AR 444.

21 ⁴³ AR 445.

22 ⁴⁴ AR 447.

MHNP Lewis diagnosed Plaintiff with schizoaffective disorder, bipolar type; and post traumatic stress disorder (PTSD). MHNP Lewis said there was no evidence of intoxication at the time of the evaluation, nor was there evidence of malingering.⁴⁵ She opined that Plaintiff would have fair ability to understand, remember, and carry out simple instructions; poor ability to understand, remember, and carry out complex instructions; poor ability to sustain concentration and persist in work-related activity; poor ability to work at a reasonable pace, maintain attendance, and work without interruption; poor ability to interact with coworkers, supervisors, and the public; and poor ability to adapt and manage work stresses.⁴⁶

c. State agency evaluators Dr. Brown and Dr. VanHoose

Dr. Brown reviewed Plaintiff's file on February 3, 2021.⁴⁷ Dr. Brown stated that in the past there had been evidence of "skin pops" related to injections.⁴⁸ He went on to state further that:

Current evidence is new/material and not supportive of substance use. While substance use is suspected, it is not identified by objective evidence. The present record does not support adopting ALJ prior assessment of DAA only.⁴⁹

⁴⁵ AR 448.

⁴⁶ AR 449-450.

⁴⁷ AR 110.

⁴⁸ AR 107.

⁴⁹ *Id.*

1 Dr. Brown opined that Plaintiff primary impairment of depressive, bipolar
 2 and related disorders is severe; that her secondary impairment of personality
 3 disorders is severe, and that her other impairment of anxiety and obsessive-
 4 compulsive disorders is severe.⁵⁰ He opined that Plaintiff has a moderate
 5 impairment in the following four domains: understanding, remembering, and
 6 applying information: interacting with others; concentrating, persisting, or
 7 maintaining pace; and adapting or managing oneself.⁵¹

8 Dr. Brown provided a very long and detailed narrative explanation of the
 9 records supporting his opinions:

10 Clmt with long hx of treatment for substance use d/o.
 11 4/1/20 clmt in ED with back pain from irregular menstrual cycles. Alert,
 12 appropriate, conversant, normal mood/affect, normal judgment. No SI
 13 or HI, normal speech.
 14 4/7/20 clmt with recent detox awaiting treatment. AO.
 15 4/27/20 clmt with housing issue and suspect meth.
 16 5/7/20 CSO eval reported when manic will have AH/VH. When
 17 depressed can have SI. Denies current SI. Clmt reporting to be manic.
 18 Clmt was found to have difficulty focusing, rapid speech, and had to be
 19 redirected several times. Cooperative, normal mood/affect, intact
 20 thought, intact orientation, intact perception. 1/3 after short delay,
 21 3f/2b, poor FOK, only able to spell WORLD forward but not backwards.
 22 Poor insight and judgment. Dx of bipolar and antisocial personality d/o.
 23 6/16/20 landlord unable to evict clmt despite suspected drug use in
 apartment, disturbance to other tenants, and multiple police visits.
 6/14/20 clmt off her anxiety medications. NAD, Aox3, fast and at times
 rambling speech, very animated. DX of anxiety by MD.
 8/27/20 clmt now homeless. Admits to MJ but denies any other
 substances. PHQ9=20. Clmt in jail three weeks prior due to theft. Clmt

21 ⁵⁰ AR 109.

22 ⁵¹ AR 110.

1 failed to follow up and when finally contacted by MH providers she
2 indicated she was headed to other appointment.

3 1/25/21 CE found clmt having arrived by car with her mother but
4 interviewed alone. Behavior prior to and after exam unremarkable.
5 Clmt endorsing difficulty being around a lot of people and things,
6 depression, difficulty falling asleep, worthlessness, hopelessness,
7 helplessness, poor energy/concentration, anxiety in crowds, moods
8 swings, impulsive spending, AH/VH hx but none during exam. Clmt
9 endorsed SI w/o current intent but prior attempt in 2014; clmt able to
10 contract for safety. Clmt endorsed current self harm to include cutting,
11 hitting and burning self. Clmt denying substance use. Clmt isolates but
12 maintains family relationships/interactions. Attempts chores and
13 cooking; not driving due to anxiety, mother managing her funds. Reads.
14 Paranoid that tv talks to her so does not watch tv. Clmt informing of
15 short periods of employment then quits. Appropriately
16 dressed/groomed. Friendly, cooperative, good eye contact, sat
17 comfortably. Fast rate/rhythm to speech. Normal gait, no abnormal
18 movements. Anxious mood, appropriate affect. Goal directed but
19 circumstantial thought process. Intact thought content w/o current
20 AH/VH. Intact focus/concentration on most questions. Fair insight.
21 AOx4. Intact remote memory, 2/3 after delay, 3f, 3b. Poor FOK. Did not
22 complete serial numbers. Dx of schizoaffective d/o, PTSD.

23 Dx to include anxiety, bipolar, schizoaffective d/o, antisocial personality
disorder. Hx of substance use d/o but no current evidence of use. PTSD
dx but not supported by objective evidence.⁵²

Dr. Brown reiterated that there was no evidence of substance use a third
time, stating:

Dx to include anxiety, bipolar, schizoaffective disorder, personality
disorder. Dx of PTSD has been provided but no objective evidence
found to support this diagnosis. Evidence indicating possible
substance use, but no objective evidence to support this currently;
MER does support history of substance use. The Claimant admitted
that in the past she had difficulty working for any protracted period
secondary to drug abuse.⁵³

⁵² AR 107.

⁵³ *Id.*

1 *d. Dr. VanHoose*

2 On August 17, 2021, Dr. VanHoose reviewed Plaintiff's file at the
3 reconsideration level.⁵⁴ Dr. VanHoose states that *Chavez* applied but the prior
4 decision was not adopted because "there is a severe mental impairment aside from
5 substance abuse."⁵⁵

6 Dr. VanHoose adopted Dr. Brown's opinions. Dr. VanHoose opined:

7 Review of all medical evidence does not support changes of severity
8 from initial assessment. Claimant is capable of performing simple,
9 repetitive tasks in a routine work environment with limited public and
peer contact.⁵⁶

10 3. Analysis

11 The Court concludes that the ALJ erred in his evaluation of the medical
12 opinions. At no point in his consideration of the opinions did he conduct a proper
13 articulation of the two factors of supportability and consistency in his analysis of
14 the five opinions but instead summarily dismissed them for varying reasons.

15 *a. The ALJ's consideration of Dr. Morgan's opinions*

16 The ALJ considered Dr. Morgan's and Dr. Carstens' opinions in one single
17 paragraph. With regard to Dr. Morgan's opinions, the ALJ articulated:

18 Dr. Morgan's opinion is wholly unpersuasive, as the claimant did
19 not inform him of her methamphetamine abuse history, including

20 ⁵⁴ AR 134.

21 ⁵⁵ Id.

22 ⁵⁶ AR 140.

1 use as recently as March 2020 (4F/1). Dr. Morgan did not have
2 pertinent information that might have provided insight on her
3 presentation during the evaluation, and his conclusions are tainted as
4 a result. He also conducted only a telephone interview with the
claimant, which indicates he did not personally observe her. Finally,
his evaluation specifically states it was conducted for DSHS purposes
and that any other use was inappropriate.⁵⁷

5 As noted above, the ALJ failed to address either the supportability factor or
6 the consistency factor in his analysis and has erred in finding the opinion
7 inconsistent with drug usage when there is no objective evidence of active drug
8 usage in the record. Thus, on its face, this analysis is flawed. The Court does find
9 the ALJ's articulated reasoning that Dr. Morgan's opinion is less persuasive
10 because he was not aware of Plaintiff's drug usage would not to be flawed on its
11 face if the record objectively supported that there was active drug usage. This is a
12 valid consideration and, if there was evidence of drug use, this would be a valid
13 reason to find the opinion less persuasive. But the Court finds that the record
14 before it does not support this conclusion. Aside from brief periods in which
15 Plaintiff admitted both in her testimony and her statements to providers she had
16 slipped and used drugs, there is no objective evidence of drug use.⁵⁸ Indeed, the
17 ALJ stated that there was no objective evidence of drug use but stated that "I
18 consider negative drug screens to be only reliable evidence of abstinence, and the
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21 ⁵⁷ AR 24.

22 ⁵⁸ AR 65.
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1 records in evidence do not include any negative screens.”⁵⁹ Thus, the ALJ has
2 improperly shifted the burden onto Plaintiff. This is error.

3 The ALJ’s reasoning that Dr. Morgan’s opinions are less persuasive because
4 he interviewed Plaintiff via a telehealth visit is also improper, particularly in light
5 of the fact that the examination was made in May 2020, at the height of the Covid-
6 19 pandemic and at a time when all non-emergency medical appointments were
7 made via tele-health. The results of medical examinations made by telehealth
8 visits during that time period have been broadly considered by the courts and the
9 Administration and there is no inference that has been drawn that they are
10 inherently less reliable.

11 Lastly, the ALJ’s reasoning that Dr. Morgan’s is not persuasive because it
12 indicates that it was for DSHS purposes only is disingenuous. The disclaimer
13 presented is one intended to indicate that there is a lack of doctor-patient
14 relationship, not to indicate a limitation to the opinion. The opinions were
15 rendered for the purpose of evaluating whether Plaintiff was disabled, which is
16 certainly consistent with their consideration in this context. Moreover, the courts
17 and the Administration routinely consider the opinions of consultative examiners
18 in a workers compensation context, and have never found them inherently
19 unreliable, despite the fact that they provide a nearly identical disclaimer.

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21 ⁵⁹ AR 23.
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1 The Court concludes that the ALJ has not provided a supported reason to
2 find Dr. Morgan's opinions to be not persuasive and finds that remand is
3 warranted for the ALJ to reevaluate the opinion in accordance with the
4 regulations.

5 *b. The ALJ's consideration of Dr. Carstens' opinions*

6 The ALJ's consideration of Dr. Carsten's opinions was quite brief. He simply
7 stated:

8 Luci Carstens, Ph.D., an evaluator for DSHS, reviewed Dr. Morgan's
9 conclusions and opined they were partially supported by available
10 records (B1F/30). She also noted that the claimant had denied
11 current problems with substances or alcohol, and she concluded the
12 claimant was disabled under DSHS regulations. Dr. Carstens'
13 opinion is similarly unpersuasive because of the claimant's
14 misinformation, and in any event, the decisions of other governmental
15 agencies are inherently neither valuable nor persuasive when
16 adjudicating disability under the Social Security Act.⁶⁰

17 Here, the ALJ fails to acknowledge that Dr. Carstens has rendered
18 any opinion other than the fact that Plaintiff met the DSHS definition of
19 disability. This is incorrect. Dr. Carstens opined that Plaintiff had mild
20 limitation in understanding, remembering, and persisting with short, simple
21 instructions; had a moderate limitation in being aware of hazards; and had
22 either marked or extreme limitations in all other functional areas.⁶¹ The
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21 ⁶⁰ AR 24.

22 ⁶¹ AR 355.

1 ALJ did not acknowledge the opinions, nor did he address the required
2 factors of supportability and consistency.

3 Additionally, the ALJ's statement that Dr. Carstens' opinions would
4 be neither valuable nor persuasive is in error. While an ALJ is not required
5 to consider the opinion of another governmental agency as to disability, he is
6 required to consider the evidence on which that decision was based.⁶²

7 Accordingly, the Court concludes that the ALJ's consideration of
8 Dr. Carsten's opinion was deficient, and remand is warranted.

9 c. The ALJ's consideration of ARNP Lewis' opinions

10 The ALJ's articulated reasoning to find ARNP Lewis' opinions to be
11 unpersuasive was the same as his reasoning for finding Dr. Morgan's opinions
12 unpersuasive. He repeated his prior error and did not articulate any consideration
13 of the required factors of supportability or consistency. Again, the Court finds
14 remand is warranted.

15 d. The ALJ's consideration of Dr. Brown's and Dr. VanHoose's
16 opinions

17 The ALJ's articulated reasoning for finding the opinions of state agency
18 evaluators Dr. Brown and Dr. Van Hoose to be unpersuasive was different than
19 that considered previously. It was, however, flawed for other reasons.

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22 ⁶² 20 C.F.R. § 416.904.

1 The ALJ articulated the following reasoning regarding his consideration of
2 Dr. Brown's and Dr. VanHoose's opinions:

3 Michael Brown, Ph.D., and Thomas VanHoose, Ph.D., opined that the
4 claimant had severe mental impairments, but their conclusions do
5 not constitute evidence that warrants a different finding from the
6 evidence in the previous decision, as that evidence likewise contained
7 multiple psychiatric diagnoses in addition to a substance use disorder,
8 including diagnoses from state agency level evaluators. Similar to the
9 prior decision, the diagnoses from Drs. Brown and VanHoose are not
validly established using DSM-V criteria, which requires that
substance use be excluded as the cause of an individual's symptoms. I
do not find sufficient explanation in the present record to exclude the
claimant's concurrent substance abuse as the cause of her symptoms,
and the opinions of Drs. Brown and VanHoose offer no support for a
contrary finding.⁶³

10 Here, the Court finds that the ALJ's reasoning is not supported by the record
11 and is flawed on its face. As with the three prior opinions discussed, the ALJ did
12 not address the critical factors of supportability and consistency. This is
13 particularly egregious here, because Dr. Brown articulated the basis for his
14 opinions in some detail.

15 Unlike other opinion sources, who the ALJ stated based their opinions on
16 misinformation from Plaintiff as to her sobriety, Dr. Brown and Dr. VanHoose
17 reviewed her file and were well-aware of her history of drug abuse. They both
18 opined that the prior record supported a finding that drug abuse was the only
19 medically determinable impairment but stated that the present record did not

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22 ⁶³ AR 26.
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1 support that conclusion. There is no doubt that their opinions that Plaintiff had
2 severe mental impairments apart from drug abuse were informed.

3 Both Dr. Brown and Dr. VanHoose were state agency evaluators who were
4 experienced and knowledgeable of the Administration's rules and regulations.
5 They are aware of the regulations regarding DAA and how it pertains to findings of
6 disability. They articulated that they considered Plaintiff's history of drug use but
7 diagnosed Plaintiff with separate medically determinable impairments based upon
8 the medical record before them. Moreover, they are licensed psychologists.

9 The ALJ has given no reason to believe that the two licensed mental health
10 experts are not aware of the requirements of the DSM-V to diagnose a common
11 mental illness, nor to question their qualification to properly diagnose an illness
12 within their area of expertise. In place of their informed, expert opinions, he has
13 imposed his own non-expert opinion based not on the objective medical record but
14 on his own prior experiences. Accordingly, the Court finds that remand is
15 warranted.

1 4. Summary

2 The Court finds that remand is warranted. The ALJ ignored the opinions of
3 all medical sources for specious reasons and relied upon his own non-expert
4 opinion. Moreover, at least once in the decision, the ALJ asserted that his opinion
5 of Plaintiff has not changed since his last decision. At the very least, this has
6 created an appearance that Plaintiff has not been afforded a fair hearing from an
7 impartial judge. Accordingly, the Court finds that remand is warranted.

8 **B. *Chavez v Brown*: This issue is moot.**

9 Plaintiff asserts that the ALJ improperly found that he was required to
10 adopt his prior finding that Plaintiff had no medically determinable impairment
11 because no new evidence established a mental illness separate from substance
12 abuse. The Court concludes that the ALJ's error in his consideration of the medical
13 opinions of Dr. Brown and Dr. VanHoose that new medical evidence indicated that
14 a medically determinable impairment existed separate from substance abuse has
15 tainted his consideration of this issue. Because the Court has remanded the case
16 for reevaluation of the medical opinions in general, this issue is moot.

17 **C. Step Two (Severe Impairment): This issue is moot.**

18 Plaintiff argues that the ALJ erred at step two by failing to find her mental
19 illness to be severe impairments. Because the Court has found remand necessary
20 because the ALJ erred in considering the medical opinions of the examining and
21 non-examining sources that Plaintiff has multiple severe mental impairments, the
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1 ALJ will be required to reevaluate whether Plaintiff has a severe impairment.

2 This issue is therefore moot.

3 **D. Remand for Further Proceedings**

4 The decision whether to remand a case for additional evidence, or simply to
5 award benefits, is within the discretion of the court.”⁶⁴ When the court reverses an
6 ALJ’s decision for error, the court “ordinarily must remand to the agency for
7 further proceedings.”⁶⁵

8 The Court finds that further development is necessary for a proper disability
9 determination. Here, the ALJ must consider the medical opinions properly as to
10 the factors of supportability and consistency, as required by the regulations, and
11 then consider any additional evidence presented, and make findings at each of the
12 five steps of the sequential evaluation process. Because the Court notes that the
13 ALJ’s failure to allow the case to proceed beyond step two in this matter might
14 create an appearance of bias, the Court also orders that a different ALJ should be
15 assigned to hear the case.

17 ⁶⁴ *Sprague v. Bowen*, 812 F.2d 1226, 1232 (9th Cir. 1987) (citing *Stone v. Heckler*,
18 761 F.2d 530 (9th Cir. 1985)).

19 ⁶⁵ *Leon v. Berryhill*, 880 F.3d 1041, 1045 (9th Cir. 2017); *Benecke* 379 F.3d at 595
20 (“[T]he proper course, except in rare circumstances, is to remand to the agency for
21 additional investigation or explanation”); *Treichler v. Comm’r of Soc. Sec. Admin.*,
22 775 F.3d 1090, 1099 (9th Cir. 2014).

